

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

FILE NO.: CDUA MA-3290
REF: OCCL: MC
Acceptance Date: January 26, 2006
180 Exp. Date: July 25, 2006

April 28, 2006

REGARDING: After-the-Fact Permit for 20,000-Gallon Water Storage Tank
and Proposed Cement Wellhead Platform.

APPLICANT: Kaupō Ranch, Ltd.
35 Kapuahi Street, Makawao, HI 96768

AGENT: Hugh Starr, Auku'u Land Consulting
PO Box 33, Makawao, HI 96768

LANDOWNER: Kaupō Ranch, Ltd.

LOCATION: Kahua, Kaupō, Hana, Maui

TMK's: (2) 1-7-002:001

AREA OF USE: 800 square feet

SUBZONE: General

DESCRIPTION OF AREA:

The project area is on the southeastern portion of Maui. The long, narrow 109.369-acre parcel, identified as *Kumunui* on the State's TMK maps, extends approximately 3000 meters uphill from Pi'ilani Highway. The parcel lies to the east of the deep Manawainui Gulch. The makai portions of the parcel lie in the General Subzone of the State Land Use Conservation District, and the mauka portions lie in the Resource Subzone. **Exhibit 1: Kaupō Ranch Lands**, shows the TMK parcel and the Conservation District boundaries.

The project site itself lies ½ mile up the 'Kaupō Trail' government road, which runs from Pi'ilani Highway to the Kaupō ranch headquarters. The water tank sites 25 feet to the east of the road, at the 600' elevation mark. The project site has a gentle slope. Total project

area is approximately 800 square feet. This site is in the General Subzone. **Exhibit 2: Regional Map** and **Exhibit 3: Topography** show the location of the site in relation to the surrounding landscape and topography.

Kaupō Ranch uses the area as pastureland for horses and cattle. The land has been part of commercial ranching for over 100 years. There are also significant numbers of wild goats and pigs in the area. Because of this, there are no known endemic or endangered species at or near the project site. The flora is dominated by introduced and invasive species – primarily kikuyu grass (*Pennisetum clandestinum*), molasses grass (*Melinis minutiflora*), Christmas berry (*Schinus terebinthifolius*), and lantana (*Lantana camara*).

There are no residential communities in the immediate project area. The community of Kaupō itself is small, and is comprised mostly of paniolo associated with the Ranch.

There are no surface archaeological features at the project site.

PROPOSED USE:

The CDUA is asking for two uses to be considered. The first is for an after-the-fact permit for an existing water tank, the second for a concrete wellhead platform.

Kaupō Ranch had the water tank built in 1995 to support cattle ranching and agricultural operations at the ranch. The 20,000-gallon corrugated, vinyl-lined tank sits off of, and to the east of, the 'Kaupō Trail.' Roughly 800 square feet of land was grubbed and graded prior to placement of the tank. **Exhibit 4: Existing Water Storage Tank** contains photographs of the tank. **Exhibit 5: Existing Utilities** shows the only other infrastructure in the area: the government road, a Verizon HI telephone line, and the Ranch waterline.

Kaupō Ranch did not apply for a permit for the tank and was subsequently fined by the Department of Land and Natural Resources [DLNR]. The enforcement case was resolved on May 25, 2004. This after-the-fact CDUA was one of the conditions set during the resolution.

The Ranch also seeks to construct a 2'x2'x6' concrete water well pad [wellhead platform] for a new well. The four square foot pad will sit eight feet from the existing tank, and will not be visible from the Kaupō Trail. The well itself is not included in this application. No additional grading is planned for the wellhead construction.

Both the tank and the wellhead platform will be used exclusively to support Ranch operations.

SUMMARY OF COMMENTS:

The OCCL consulted the following persons and agencies:

Department of Land and Natural Resources (DLNR), Commission on Water Resource Management (CWRM); DLNR, Maui Land Division; Office of Hawaiian Affairs; Hawai'i Department of Agriculture; Office of Hawaiian Affairs; and Maui County Department of Planning. The CDUA was also available for public review at the Kihei Regional Library, and a notice was published in the February 23, 2006 edition of the Office of Environmental Quality Control's *Environmental Notice*.

The following comments were received:

DLNR CWRM

CWRM notes that an application for a well construction permit is in suspense pending the resolution of this matter. A second well application for a neighboring but unrelated site was approved, but has expired

DLNR Land Division

No comments.

Maui County Department of Planning

No comments.

Office of Hawaiian Affairs

No comments specific to the proposal.

OHA does ask that work stop immediately if any significant cultural deposits or human skeletal remains are encountered, and that DLNR State Historic Preservation Division be contacted.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated January 26, 2006 that:

1. The proposed use was an identified use within the Conservation District pursuant to Hawai'i Administrative Rules (HAR), §13-5-23 *Identified land uses in the limited subzone, L-1 AGRICULTURE, (C-1) Agriculture within an area of one acre or less.*
2. A public hearing pursuant to HAR §13-5-40 was not required.
3. This project was exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8 *Exempt Classes of Action, 3: Construction and location of single, new, small facilities or structures.*

SECTION 13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, Hawaii Administrative Rules (HAR).

1. *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

Staff is of the opinion that the proposed action will not negatively impact the natural resources of the area.

2. *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

Pursuant to HAR §13-5-14, the objective of the Resource Subzone is to designate open space where specific conservation uses may not be defined, but where urban use may be premature. General Subzone lands encompass lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when the facilities are compatible with the natural physical environment.

The project is accessory to normal ranch operations, and as such is compatible with the stated objectives of the subzone. It will support existing ranch operations, but will not facilitate greater development or urbanization of the area.

3. *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

Staff notes that the proposed project is consistent with Chapter 205A.

4. *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff is of the opinion that the project will have little to no impact on the existing natural resources of the area.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff notes the parcel has been in ranchlands for the past 100 years. Water tanks that are similar in design and size are common and necessary features of rural agricultural

areas in Hawai'i. The proposed use is thus a visually and functionally appropriate use for the subject parcel.

6. *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes that the force main will have a minimal impact on open space. The tank does not impact any significant view plains, and the proposed wellhead platform will not be visible from the road.

7. *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

The proposed use is an identified use within the Conservation District according to the Hawai'i Administrative Rules (HAR) §13-5-23, L-1 AGRICULTURE.

The subject parcel, as well as the neighboring parcels, has been used as ranchland for over 100 years. The small community of Kaupō relies on the ranchlands for employment, and most residents are paniolo or part of paniolo families. Rain is intermittent in the area, and the Ranch depends on having a steady supply of water to maintain operations. The existing tank and proposed wellhead platform will assist Kaupō Ranch in maintaining a reliable supply of water for its existing operations.

The existing tank is similar in size and appearance to other tanks on rural Hawaiian ranches. Its use and appearance are thus consistent with the culture and the landscape.

Illegal grading did occur with the tank's construction. The area has a gentle slope, and no known endemic or endangered species. Staff is of the opinion that the grading did not result in any significant environmental damage. The Ranch was cited for the illegal activity; successfully completing this application is one of the conditions for resolving the case.

Staff is of the opinion that the proposed project will not adversely affect the land, resources, or community of Kaupō. It is not designed to increase capacity, and should not result in increased development of the land. In that it supports Ranch operations, the proposal should actually benefit the community of Kaupō.

Staff therefore recommends;

RECOMMENDATION:

Based on the proceeding analysis, staff recommends that the Board of Land and Natural Resources APPROVE this application to for both an after-the-fact permit for a water tank and for the proposed wellhead platform at Kaupō Ranch, subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawai'i Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"
- 4) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 5) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 6) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or

revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

- 7) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 8) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
- 9) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawai'i, and by Hawai'i statutory and case law;
- 10) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;
- 11) The applicant will cease work if any significant archaeological ruins or human skeletal remains are uncovered during the work, and will then contact the DLNR State Historic Preservation Division;
- 12) The applicant shall provide documentation (e.g., book and page, or document number) that the permit approval has been placed in recordable form as a part of a deed instrument;
- 13) Other terms and conditions as may be prescribed by the Chairperson; and
- 14) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

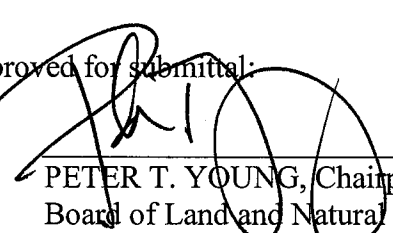
Respectfully submitted,



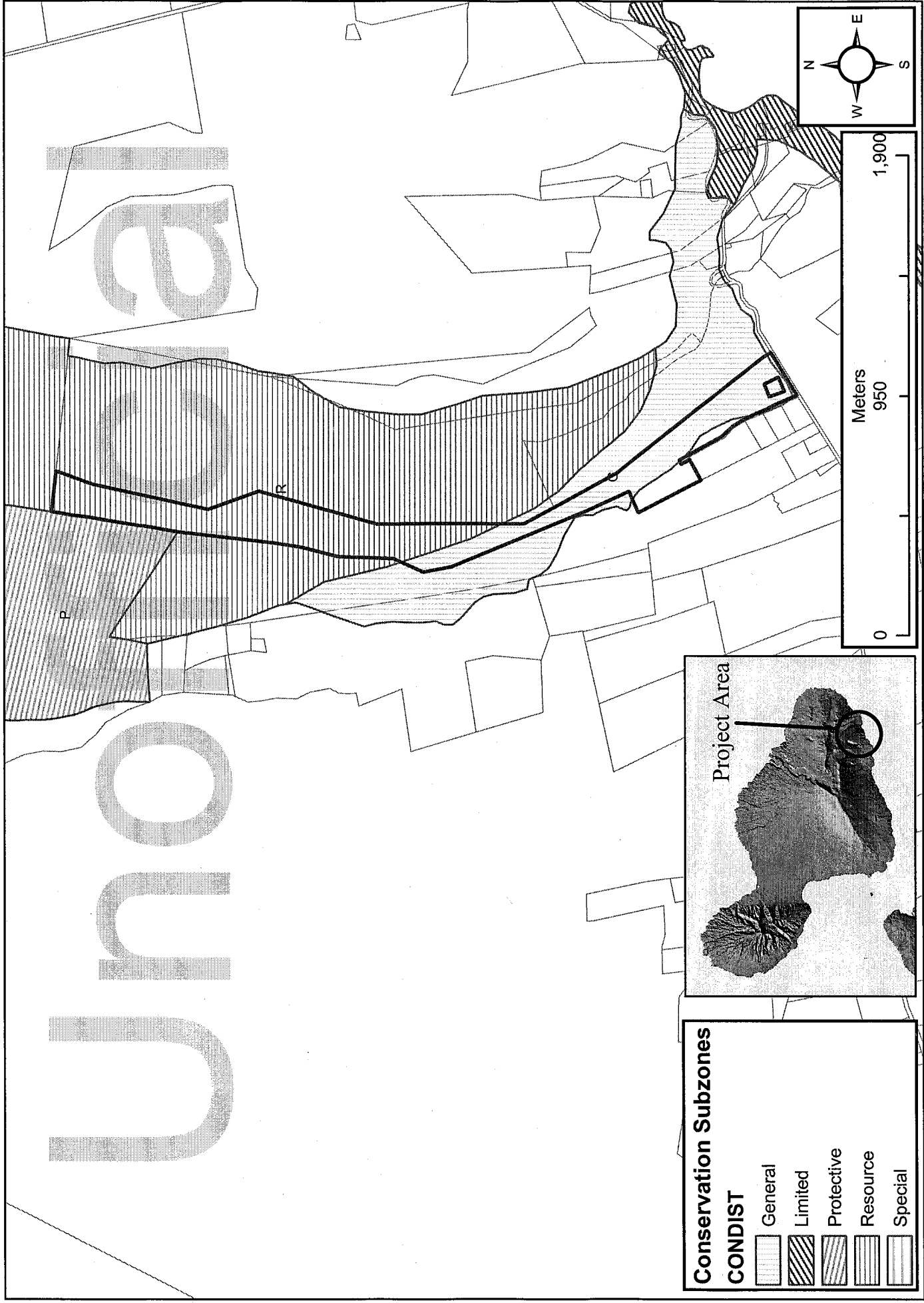
Michael Cain
Staff Planner

Approved for submittal:

By:



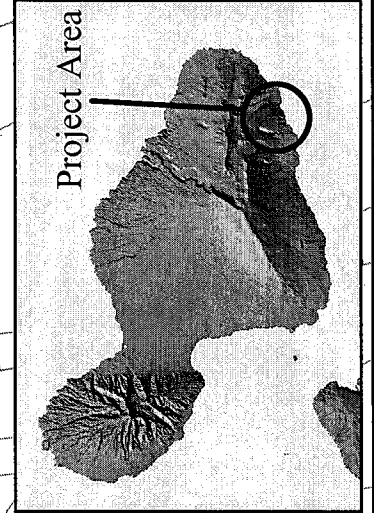
PETER T. YOUNG, Chairperson
Board of Land and Natural Resources



Conservation Subzones

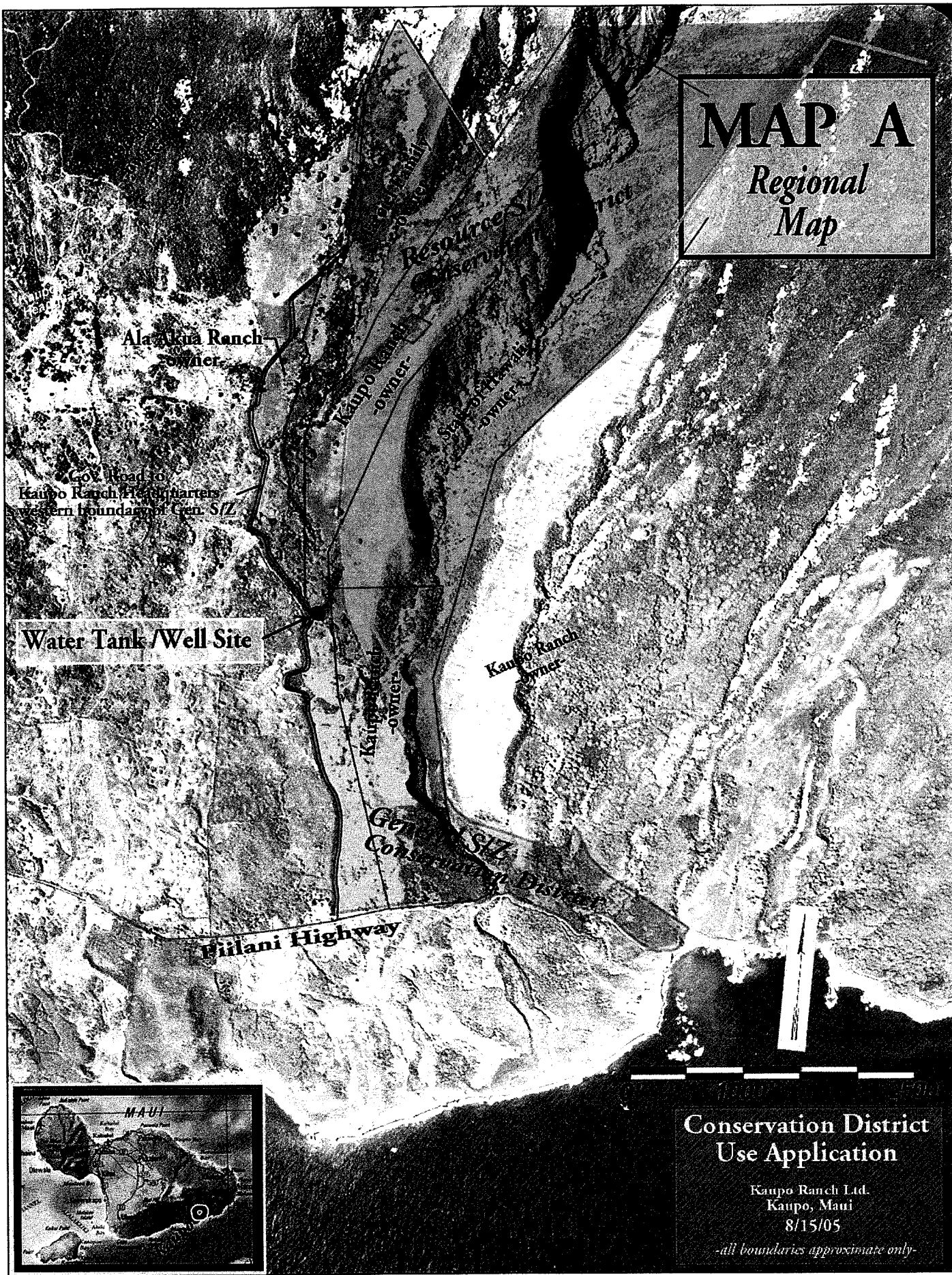
CONDIST

	General
	Limited
	Protective
	Resource
	Special



MAP A

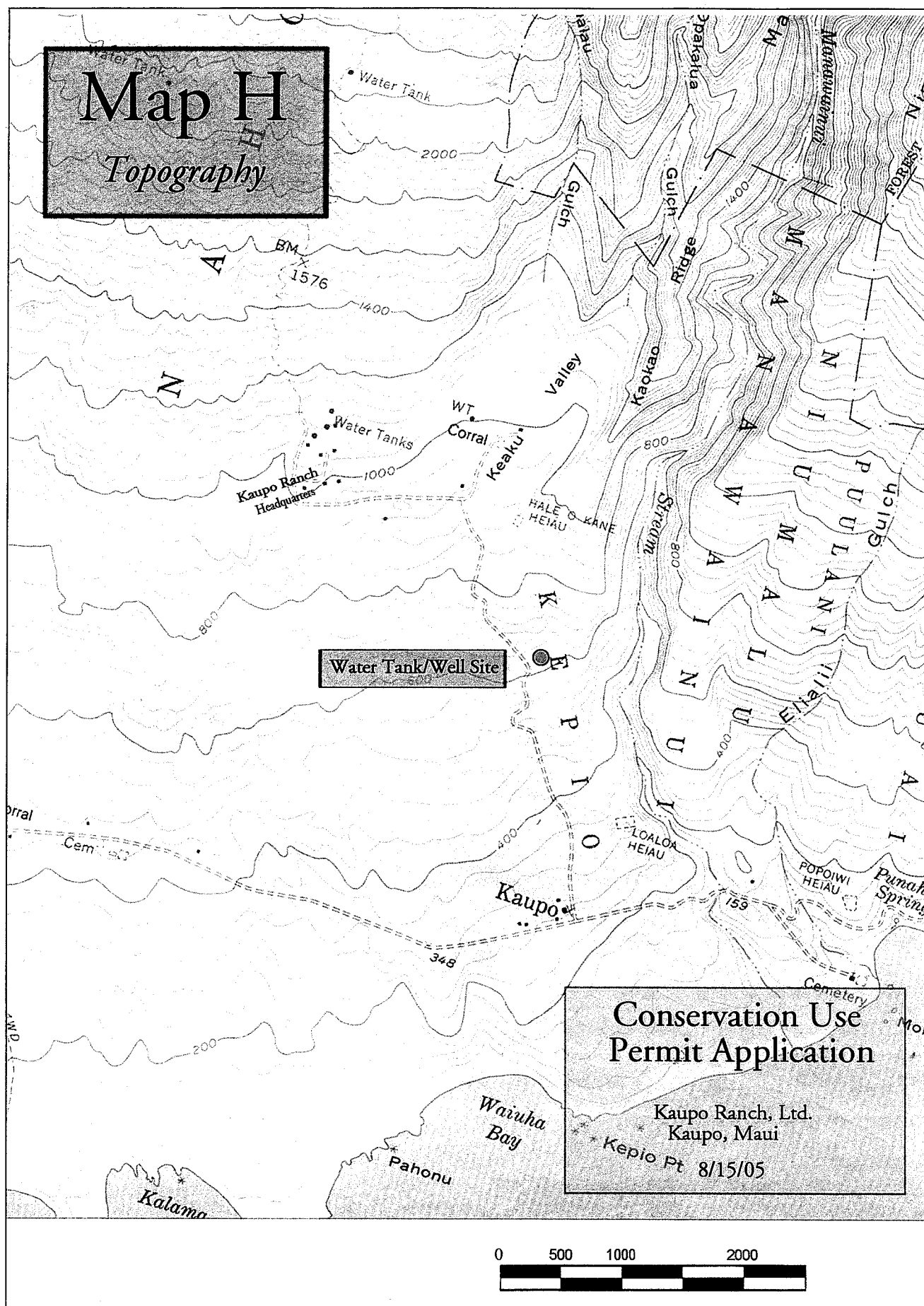
Regional Map



Conservation District
Use Application

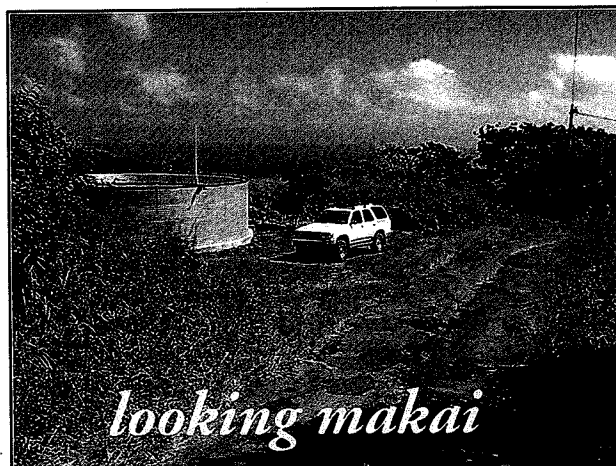
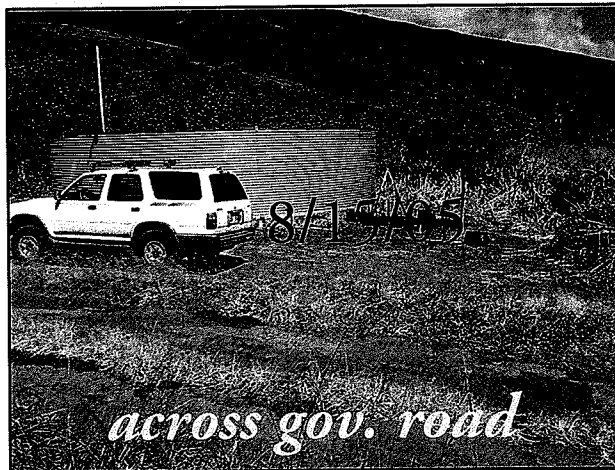
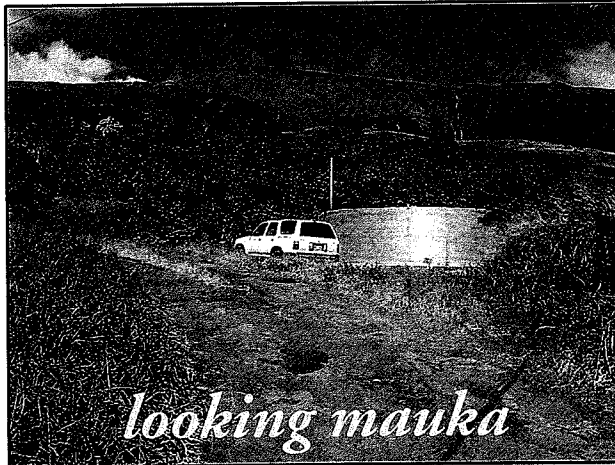
Kaupo Ranch Ltd.
Kaupo, Maui
8/15/05

-all boundaries approximate only-



Existing Water Storage Tank Site

EXHIBIT 4



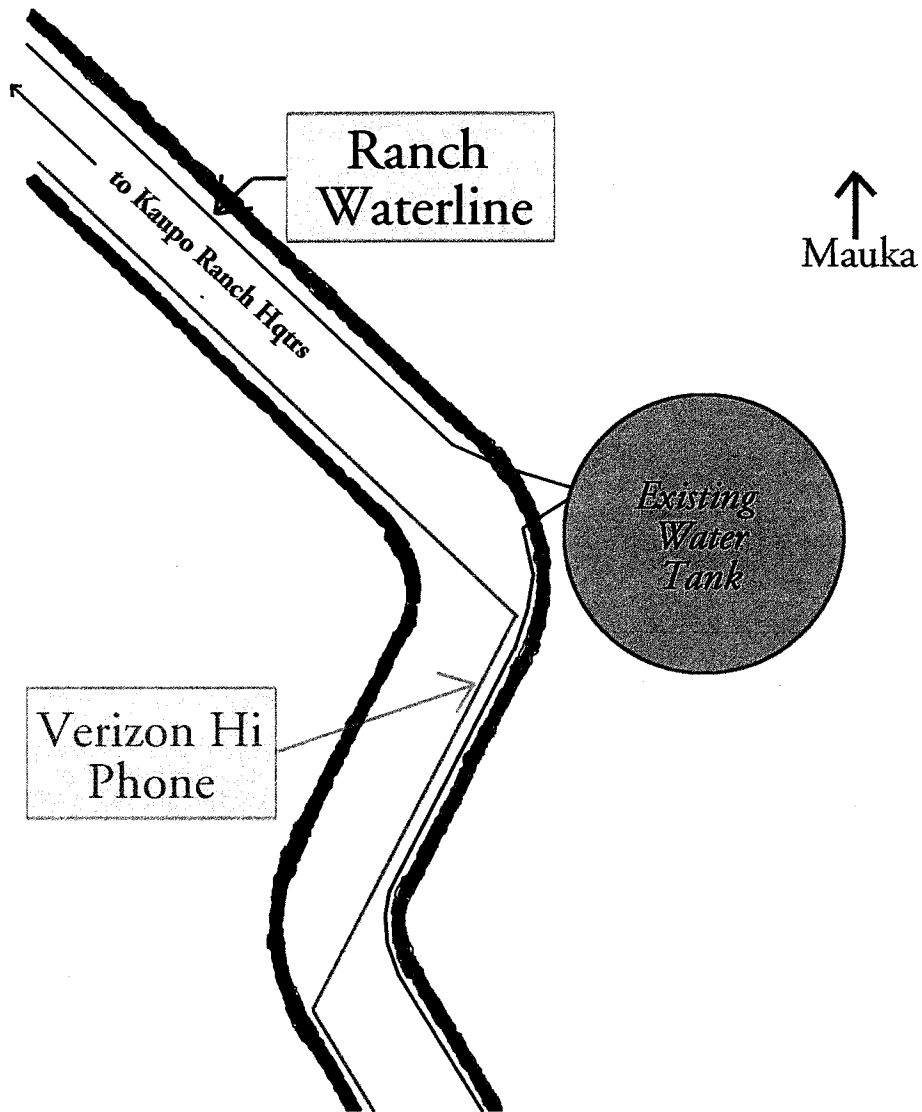
Conservation District Use Application

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MAP E

*Existing
Utilities*



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